

# Notice of Allowability

Application No.

09/485,434

Applicant(s)

BERGHOF ET AL.

Examiner

Jehanne E Souaya

Art Unit

1634

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 5/29/2003.
2. ☒ The allowed claim(s) is/are 16, 18, 20 and 48-53.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☒ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: translation of foreign priority document.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

- |  |   |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)  | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____             |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____               | 6 <input type="checkbox"/> Examiner's Amendment/Comment                             |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|  | 9 <input type="checkbox"/> Other  |

### REASONS FOR ALLOWANCE

1. The following is an examiner's statement of reasons for allowance: The claims are drawn to kits comprising a nucleic acid selected from the group consisting of SEQ ID NOS 1-10 or the complement of any of SEQ ID NO 1-10, and methods of using such to detect the presence or absence of *Salmonella enterica* subspecies in a sample. The closest prior art is that of Holmes et al (WO 95/00664) which teaches a method and sequences for use in detecting *Salmonella enterica* subspecies. The claims are allowable over the closest prior art because Holmes et al do not teach or suggest a nucleic acid consisting of a sequence from the group consisting of SEQ ID NOS 1-10 or the complement of SEQ ID NO: 1-10, or the use of such sequence in detecting *Salmonella enterica* subspecies.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Jehanne Souaya whose telephone number is (703) 308-6565. The examiner can normally be reached Monday-Friday from 9:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones, can be reached on (703) 308-1152. The fax phone number for this Group is (703) 305-3014.

Application/Control Number: 09/485,434  
Art Unit: 1634

Page 3

Any inquiry of a general nature should be directed to the Group receptionist whose telephone number is (703) 308-0196.



Jehanne Souaya  
Primary Examiner  
Art Unit 1634

July 23, 2003

Art Unit: 1634

## CLAIMSPTO

C. DESSAU

7/25/03

16. (Four Times Amended) The kit of claim 48, wherein the isolated nucleic acid molecules are produced synthetically and in at least two separate synthesis batches.
18. (Four Times Amended) A method of detecting the presence or absence of a subspecies of bacterium *Salmonella enterica*, comprising the steps of:
  - (a) providing at least one isolated nucleic acid molecule selected from the group consisting of SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, SEQ ID NO: 4, SEQ ID NO: 5, SEQ ID NO: 6, SEQ ID NO: 7, SEQ ID NO: 8, SEQ ID NO: 9 and SEQ ID NO: 10 and the complement of SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, SEQ ID NO: 4, SEQ ID NO: 5, SEQ ID NO: 6, SEQ ID NO: 7, SEQ ID NO: 8, SEQ ID NO: 9 and SEQ ID NO: 10;
  - (b) contacting the at least one isolated nucleic acid molecule of (a) with a test sample containing nucleic acids;
  - (c) hybridizing and/or amplifying the nucleic acid molecules of the test sample with the at least one isolated nucleic acid molecule of (a); and
  - (d) detecting nucleic acid hybrids formed between the nucleic acid molecules of the test sample and the at least one nucleic acid molecule of (a) and/or detecting amplified nucleic acid molecules of the test sample, thereby determining the presence or absence of a subspecies of the bacterium *Salmonella enterica* in the test sample.
20. (Thrice Amended) The method of claim 18, wherein the amplifying of the nucleic acid molecules of the test sample is carried out by a polymerase chain reaction (PCR).

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48. (Amended) A kit comprising: (i) one or more isolated nucleic acid molecules selected from the group consisting of SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, SEQ ID NO: 4, SEQ ID NO: 5, SEQ ID NO: 6, SEQ ID NO: 7, SEQ ID NO: 8, SEQ ID NO: 9 and SEQ ID NO: 10 and the complement of SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, SEQ ID NO: 4, SEQ ID NO: 5, SEQ ID NO: 6, SEQ ID NO: 7, SEQ ID NO: 8, SEQ ID NO: 9 and SEQ ID NO: 10, and (ii) optionally substances for analytical detection processes.

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--49. (New) The kit of claim 48, wherein at least one isolated nucleic acid molecule is modified or labelled with a group selected from the group consisting of a radioactive group, a colored group, a fluorescent group, a group for immobilisation on a solid phase and a group allowing an indirect or direct enzyme reaction.

50. (New) The kit of claim 49, wherein the group allowing an enzyme reaction is selected from the group consisting of antibodies, antigens, enzymes, substances having an affinity for enzymes and substances having an affinity for enzyme complexes.

51. (New) The kit of claim 48, wherein the isolated nucleic acid molecule is single stranded.

52. (New) The kit of claim 48, wherein the isolated nucleic acid molecule is double stranded.

53. (New) The method of claim 18, wherein the subspecies of *Salmonella enterica* is selected from the group consisting of *Salmonella enterica* subspecies *enterica*, *salamae*, *arizonae*, *diarizonae*, *houtenae*, *bongori* and *indica*.--